IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1150 OF 2005

Ramkrishna Keshav Giri Gosavi & Ors. ..Petitioners.

Versus

Zumbarlal Ratanchand Nahar & Ors. ..Respondents.

Mr. Umesh G. Deshpande for the Petitioners.
Mr. Madhav Jamdar for Respondents Nos.1 to 3 & 5.

CORAM : S. A. BOBDE, J.
DATED : 06TH OCTOBER, 2005.

P.C.:

1. The learned counsel for the petitioners seeks to delete the Respondent Nos. 6 and 7. Allowed to be deleted.

2. Rule returnable forthwith. Mr. Jamdar, Advocate for the Respondents 1 to 3 and 5, appears and waives service of rule. Heard by consent.

3. The petitioners have challenged the order dated 30.11.2004 passed by the Maharashtra State Co-operative Appellate Court, restraining the petitioners from acting as members of the Managing Committee of the Co-operative Society in question. The learned trial court i.e. the Co-operative Court had rejected this prayer.

4. The Appellate Court granted it on the basis of a prima facie finding, without recording any evidence in the election dispute, that the petitioners' name do not find place in the list of the eligible members and that their claim to membership is not correct since they have not been admitted to the membership properly. The petitioners have disputed these contentions on fact. However, the Maharashtra State Co-operative Appellate Court has by way of an interim order held that the petitioners are not eligible for contesting the elections and get elected and therefore, not entitled to manage the society. The injunction is based on this finding which has been arrived at without recording any evidence. By granting injunction the State Co-operative Appellate Court has departed from a well-known principle followed by courts that elected candidates should not be restrained from functioning until their election is set aside by the competent court. Without commenting on the merits of the dispute, I consider it appropriate to set aside the impugned order, which is hereby set aside.

5. The Co-operative Court No.II, Pune at Pune is directed to decide the election petition i.e. dispute

No. 24/2004 as expeditiously as possible and in any case not later than two months from today.

6. Having regard to the fact that the list of eligible candidates is pending decision in Appeal No. 44 of 2004 before the Co-operative Appellate Court, the learned Co-operative Appellate Court is directed to dispose of the said appeal within a period of one month from the next date.

7. Rule is disposed of in the above terms.

DT.06.10.05 (S.A.BOBDE,J)

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